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FACT SHEET

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Judicial Branch Contract Law and *Judicial Branch Contracting Manual*

The California Judicial Branch Contract Law (JBCL), enacted by the Legislature on March 24, 2011, is part of the California Public Contract Code and requires the superior and appellate courts, the Judicial Council, the Administrative Office of the Courts (AOC), and the Habeas Corpus Resource Center (HCRC) to comply with provisions of the code related to the procurement of goods and services. The JBCL applies to contracts, including purchase orders, entered into or amended on or after October 1, 2011.

Under the JBCL, the Judicial Council must adopt and publish a *Judicial Branch Contracting Manual* that sets out policies and procedures that the courts, the AOC, and the HCRC must follow and that are consistent with the Public Contract Code and substantially similar to the provisions contained in the *State Administrative Manual* and the *State Contracting Manual*. The Judicial Council adopted the *Judicial Branch Contracting Manual* on August 26, 2011, to take effect October 1, 2011. The full council report and the manual are available at www.courts.ca.gov/documents/082611item6.pdf.

New Requirements

The new requirements for judicial branch procurement and contracting activities under the JBCL and *Judicial Branch Contracting Manual* are different from those in the *Trial Court Financial Policies and Procedures Manual* (TCFPPM), AOC policy 7.2.1 Procurement of Goods and Services, and other applicable policies. These new requirements include the following:

Distinction between procurements of non-IT goods, non-IT services, and IT goods and services

Different portions of the Public Contract Code govern procurements for information technology (IT) goods and services, for non-IT goods, and for non-IT services.

Accordingly, the *Judicial Branch Contracting Manual* contains policies and procedures appropriate to each category.

Selection methodology: lowest responsible bidder vs. best value

If a contract for non-IT goods will equal or exceed \$50,000, the contract must be awarded to the responsible bidder that submitted the lowest bid. A “responsible bidder” is a bidder that possesses the required experience, facilities, and financial resources and is fully capable of performing the relevant contract.

In general, contracts for non-IT services, and for IT goods and services, may continue to be awarded to the bidder who provides better value based on the selection criteria. As set out in the manual, certain types of non-IT services may be more appropriate for award to the lowest responsible bidder.

Dollar thresholds for different solicitation documents and advertising requirements

The threshold amounts for requiring more formal written solicitation documents and advertising the procurement differ from the requirements under the TCFPPM:

Type of Procurement	Dollar Threshold Under the <i>Judicial Branch Contracting Manual</i> for Type of Solicitation Document Required	Dollar Threshold Under the <i>Judicial Branch Contracting Manual</i> for Advertising the Solicitation
Non-IT goods	Up to \$5,000: a solicitation document is not required. \$5,000- \$50,000: either a Request for Quote (RFQ) or Invitation for Bid (IFB) must be used. Over \$50,000: IFB must be used.	Up to \$5,000: advertising is not required. \$5,000- \$50,000: advertising is not required. Over \$50,000: advertising is required.
Non-IT services	Up to \$5,000: a solicitation document is not required. Over \$5,000: Either an IFB or Request for Proposal (RFP) must be used.	Up to \$5,000: advertising is not required. Over \$5,000: advertising is required.

IT goods and services	<p>Either IT goods only, IT services only, or mixed: Up to \$5,000: a solicitation document is not required.</p> <p>IT goods only: \$5,000 -100,000: Either an RFQ or RFP must be used.</p> <p>Over \$100,000: RFP must be used.</p> <p>IT services only: \$5,000 or over: RFP must be used.</p> <p>Mixed IT goods and services: If over \$100,000, or if services portion is over \$5,000: RFP must be used.</p>	<p>Either IT goods only, IT services only, or mixed: Up to \$5,000: advertising is not required.</p> <p>IT goods only: \$5,000 -100,000: advertising is not required.</p> <p>Over \$100,000: advertising is required.</p> <p>IT services only: \$5,000 or over: advertising is required.</p> <p>Mixed IT goods and services: If over \$100,000, or if services portion is over \$5,000: advertising is required.</p>
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Certain policies superseded

The new manual supersedes the following chapters of the TCFPPM that apply to the trial courts: 6.01 Procurement; 7.01 Contracts; 7.02 Memoranda of Understanding (MOUs), Interagency Agreements (IAs) and Intrabranh Agreements (IBAs); and 7.03 Contract Administration.

The *Judicial Branch Contracting Manual* also supersedes other parts of the TCFPPM that are inconsistent with the new manual’s requirements.

In addition, the *Judicial Branch Contracting Manual* supersedes AOC policy 7.2.1 Procurement of Goods and Services and AOC Policy Regarding Legal Review of Procurement Matters for all procurement and contracting purposes *except* as those policies apply to planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities. This is because these trial court facilities construction-related activities are expressly excluded from coverage under the JBCL and remain covered by existing policy and procedure.

Finally, the *Judicial Branch Contracting Manual* supersedes the *Court Facilities Contracting Policies and Procedures*, adopted by the Judicial Council on December 7, 2007, for all facilities-related procurement and contracting purposes *except* for

planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities.

Local contracting manual

The JBCL requires each court, the AOC, and the HCRC to adopt a local contracting manual for procurement and contracting. The *Judicial Branch Contracting Manual* addresses the required contents—including identifying personnel to perform specific procurement and contracting functions—of the local manual.

Reporting and audits

The JBCL imposes mandatory periodic reporting requirements on the Judicial Council concerning contracting activities of the judicial branch. To meet those requirements, the courts and the HCRC must track more information and maintain it in a different format than may have been done previously. The Phoenix Financial System is now configured so that the information provided by the trial courts can be tracked in the specified manner. The AOC's Finance Division, which maintains contracting and procurement information regarding the appellate courts, the AOC, and the HCRC, tracks the specified information.

The State Auditor is required to audit the trial courts to assess their implementation of the JBCL. After the State Auditor completes a pilot program under which six trial courts will be audited, all trial courts will be required to be audited at least once every four years.

In addition to trial court audits, the State Auditor is also required to audit the appellate courts, the AOC, and the HCRC to assess their implementation of the JBCL. These audits are to be conducted by the end of 2013 and then biennially.

Notifying the state auditor of large contracts

The JBCL requires that the courts, the AOC, and the HCRC notify the State Auditor, in writing, within 10 business days of entering a contract after October 1, 2011, with a total cost estimated to be more than \$1 million. Contracts entered into after October 1, 2011, for administrative or infrastructure IT projects with total costs estimated to be more than \$5 million are also subject to the review and recommendations of the California Technology Agency.

Other Resources

The August 26, 2011, report to the Judicial Council includes the *Judicial Branch Contracting Manual* and a brief overview of the new law and its requirements. The report and manual are available at www.courts.ca.gov/documents/082611item6.pdf

and <http://serranus.courtinfo.ca.gov/reference/documents/jcreport-pubcomment-jbcl.pdf>.

The AOC Office of the General Counsel is preparing various resource materials to help the courts implement the JBCL and the requirements of the *Judicial Branch Contracting Manual*. They include:

- FAQ document
- Template agreements and purchase order terms and conditions
- Template solicitation documents
- Sample local contracting manual

These and other resource materials will be posted on Serranus and the Court Online Mentoring, Education, and Training (COMET) site (<http://www2.courtinfo.ca.gov/comet/index.htm>) as they are developed.

For further information or questions relating to the interpretation of the JBCL or the *Judicial Branch Contracting Manual*, please contact any of the attorneys identified below, all of whom are in the Transactions and Business Operations Unit of the AOC Office of the General Counsel.

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